

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**NANCY K. O'ROURKE,**

**Plaintiff,**

**v.**

**Case No. 13-CV-00193 RB/ACT**

**NORTHERN NEW MEXICO COLLEGE,  
SUSAN PACHECO and NANCY BARCELO,**

**Defendants.**

**UNOPPOSED MOTION TO DISMISS INDIVIDUAL DEFENDANTS  
AND MEMORANDUM OF LAW IN SUPPORT**

**COME NOW** the Defendant Susan Pacheco and Defendant Nancy Barcelo, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, by and through their counsel of record Basham & Basham P.C. (Mark A. Basham), and hereby move this Court to dismiss them from this lawsuit with prejudice.

When faced with a motion to dismiss under Rule 12 (b) (6) of the Federal Rules of Civil Procedure, a court must decide whether the factual allegations of the complaint “are sufficient to raise a right to relief above the speculative level, while assuming that all the allegations in the complaint are true.” *Lane v. Page*, 581 F.Supp.2d, 1094, 1104 (D.N.M. 2008) (internal quotations and citations omitted). In her complaint, Plaintiff alleges that Defendants Pacheco and Barcelo were employees of Plaintiff’s employer, Northern New Mexico College (NNMC). Paragraph four (4) of Plaintiff’s First Amended Complaint alleges that Defendant Barcelo was the president of NNMC, and paragraph five (5) alleges that Defendant Pacheco was Chief of Staff of NNMC. *See* Plaintiff’s First Amended Complaint filed herein on October 1, 2013 [Doc. 17]. Even assuming all facts stated in the complaint are true, the complaint fails to state a cause

of action against Defendants Pacheco and Barcelo (herein the Individual Defendants) because neither Title VII nor the Equal Pay Act permits actions against individuals who are not employers.

Count I of the First Amended Complaint alleges that the Individual Defendants are liable to the Plaintiff under Title VII for discrimination based on race. *See* page 5 of the Plaintiff's First Amended Complaint filed herein on October 1, 2013 [Doc. 17]. Count II of the First Amended Complaint alleges that the Individual Defendants are liable to the Plaintiff under the Equal Pay Act for discrimination based on sex. *Id.* at pages 5-6. However, personal capacity suits against individual supervisors are inappropriate under Title VII. *LaFleur v. Wallace State Community College*, 955 F.Supp. 1406, 1424 (M.D. AL 1996). *Peters v. Black Tie Value Parking Services*, 2013 U.S. Dist. LEXIS 5203, 2013 WL 149773 (W.D. OK 2013) "Similarly, the Equal Pay Act imposes liability only upon an employer, and individual supervisors and managers are not liable for a violation of the Act." *Id.* Finally, because Title VII and Equal Pay claims against individuals in their official capacity are repetitious when the employer is named as a defendant, all claims against the individual defendants, whether they be in their official or individual capacity, should be dismissed with prejudice. *See LaFleur*, 955 F.Supp. at 1424.

Counsel for Defendants has conferred with counsel for Plaintiff to ascertain Plaintiff's position as to this motion. Counsel for Plaintiff informed counsel for Defendants that Plaintiff does not oppose the motion.

WHEREFORE, Defendant Susan Pacheco and Defendant Nancy Barcelo ask this Court to dismiss them from this lawsuit with prejudice.

Respectfully Submitted,

/s/ **Mark A. Basham** 1/21/14

Mark A. Basham  
Basham & Basham, P.C.  
Attorneys for the Defendants  
2205 Miguel Chavez, Suite A  
Santa Fe, New Mexico 87505  
(505) 988-4575  
[mbasham@bbpcnm.com](mailto:mbasham@bbpcnm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of January, 2014, I e-filed and served the foregoing electronically through the CM/ECF system, which caused the following parties of counsel to be served by electronic means:

Samuel C. Wolf, Esq.,  
Jones, Snead, Wertheim & Clifford, P.A.  
Attorneys for Plaintiff  
1800 Old Pecos Trail  
Santa Fe, New Mexico 87504

/s/ **Mark A. Basham**

Mark A. Basham